

# United States Senate

WASHINGTON, DC 20510

October 1, 2019

The Honorable Kevin K. McAleenan  
Acting Secretary  
Department of Homeland Security  
2801 Nebraska Avenue NW  
Washington, D.C. 20528

Ken Cuccinelli  
Acting Director  
U.S. Citizenship and Immigration Services  
20 Massachusetts Ave., NW, MS 2090  
Washington, D.C. 20529

Mark A. Morgan  
Acting Commissioner  
Customs and Border Protection  
1300 Pennsylvania Avenue NW  
Washington, D.C. 20229

Dear Acting Secretary McAleenan, Acting Director Cuccinelli, and Acting Commissioner Morgan:

We write to express serious concern with the Administration's recent decision to allow agents within Customs and Border Protection (CBP)—specifically Border Patrol agents—to conduct “credible fear interviews” rather than highly trained asylum officers within U.S. Citizenship and Immigration Services (USCIS). CBP is, first and foremost, a law enforcement agency. Because of CBP's law enforcement mission and history of anti-immigrant sentiment, CBP agents<sup>1</sup> are not equipped to apply our laws and regulations to vulnerable individuals seeking our protection. The change endangers the lives of countless vulnerable individuals, including children.

The conduct of credible fear interviews is governed by statute. Under section 235 of the Immigration and Nationality Act (INA), credible fear interviews must be conducted by an “asylum officer” with “professional training in country conditions, asylum law, and interview techniques.” To pass this interview, an individual must demonstrate a “significant possibility” that he or she will establish an asylum claim during a full hearing. To be clear—a credible fear interview is a threshold screening undergone by thousands of vulnerable individuals seeking relief each year. Passing it merely gives an asylum seeker the opportunity to present his or her full case to an Immigration Judge, who will then decide whether the applicant's fear meets the higher standard for a grant of asylum. An ultimate determination of “no credible fear” means that an asylum seeker will not receive his or her day in court. Therefore, the standard is purposefully generous to preserve a bedrock principle of our democracy: an individual should have a fair chance to present his or her case. Most importantly, this standard prevents us from turning away someone with a bonafide fear of persecution before their day in court.

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<sup>1</sup> In this letter, “CBP agents” refers in general to any individual employed by CBP or any of its sub-departments, including Border Patrol.

On April 29, 2019, President Trump issued a memorandum detailing a series of procedural reforms, including a directive to modify how the Department of Homeland Security (DHS) adjudicates credible fear claims.<sup>2</sup> Reportedly, in April, 10 Border Patrol agents from the El Centro sector in California commenced training and 60 agents were due to conduct their first credible fear interviews.<sup>3</sup> In May, DHS reportedly commenced a coordinated effort to train Border Patrol agents to conduct credible fear interviews.<sup>4</sup> On September 19, 2019, the LA Times reported that Border Patrol agents arrived at the South Texas Family Residential Center in Dilley, Texas.<sup>5</sup> Despite CBP's mission and history, DHS, CBP, and USCIS are apparently moving forward with the plan to have Border Patrol agents (and potentially other CBP agents) conduct credible fear interviews.

The administration's change in policy is deeply troubling. CBP's mission is fundamentally incompatible with the highly sensitive and non-adversarial nature of credible fear interviews. Moreover, CBP's history of misconduct and anti-immigrant sentiment render the agency ill-suited to interview individuals sharing sensitive details of persecution in their home countries. CBP's provision of false information, mocking of asylum seekers, deterrence of asylum seekers from pursuing their claims, and failure to respond to complaints of persecution have been well documented.<sup>6</sup> Earlier this summer, ProPublica reported that up to 9,500 current and former CBP employees from across the country belonged to a private online group replete with derogatory remarks and graphic images targeting immigrants fleeing persecution in their home countries.<sup>7</sup> For example, in response to a news story about a 16-year-old Guatemalan migrant who died in May while in CBP custody, group members posted an image of Elmo saying "Oh well" while another stated "If he dies, he dies."<sup>8</sup> CBP agents have repeatedly exhibited indifference to the lives of vulnerable immigrants seeking refuge in our country.

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<sup>2</sup> The White House, Presidential Memorandum on Additional Measures to Enhance Border Security and Restore Integrity to Our Immigration System (Apr. 29, 2019), *available at* <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-additional-measures-enhance-border-security-restore-integrity-immigration-system/>.

<sup>3</sup> Molly O' Toole, Los Angeles Times, "Border Patrol agents, rather than asylum officers, interviewing families for 'credible fear'" (Sept. 19, 2019), *available at* <https://www.latimes.com/politics/story/2019-09-19/border-patrol-interview-migrant-families-credible-fear> ["Sept. 19 Report"].

<sup>4</sup> Molly O' Toole, Los Angeles Times, "Border Patrol will screen asylum requests in new push to restrict claims, memos show" (May 9, 2019), *available at* <https://www.latimes.com/politics/la-na-pol-trump-border-patrol-asylum-credible-fear-memos-20190509-story.html> ["May 9 Report"].

<sup>5</sup> Sept. 19 Report.

<sup>6</sup> See, e.g., Human Rights First, "Crossing the Line: U.S. Border Agents Illegally Reject Asylum Seekers" (May 2017), *available at* <https://www.humanrightsfirst.org/sites/default/files/hrf-crossing-the-line-report.pdf>; Guillermo Cantor, PhD., Walter Ewing, PhD., American Immigration Council, "Still No Action Taken: Complaints Against Border Patrol Agents Continue to Go Unanswered" (Aug. 2, 2017), *available at* <https://www.americanimmigrationcouncil.org/research/still-no-action-taken-complaints-against-border-patrol-agents-continue-go-unanswered>.

<sup>7</sup> A.C. Thompson, PROPUBLICA, "Inside the Secret Border Patrol Facebook Group Where Agents Joke About Migrant Deaths and Post Sexist Memes" (Jul. 9, 2019), *available at* <https://www.propublica.org/article/secret-border-patrol-facebook-group-agents-joke-about-migrant-deaths-post-sexist-memes>; A.C. Thompson, Dara Lind, PROPUBLICA, "Investigation of Secret Border Patrol Group Launched as New Degrading Facebook Posts Surface" (Jul. 1, 2019), *available at* <https://www.propublica.org/article/investigation-of-secret-border-patrol-group-launched-as-new-degrading-facebook-posts-surface>.

<sup>8</sup> A.C. Thompson, Dara Lind, PROPUBLICA, "Investigation of Secret Border Patrol Group Launched as New Degrading Facebook Posts Surface" (Jul. 1, 2019), *available at* <https://www.propublica.org/article/investigation-of-secret-border-patrol-group-launched-as-new-degrading-facebook-posts-surface>.

More troubling still is that the administration's decision to empower CBP with the authority to conduct credible fear interviews was done precisely because of its history of anti-immigrant behavior. Stephen Miller and other administration officials have reportedly sought the change because they were outraged by the rate at which individuals passed their initial screenings and believe CBP agents will be tougher on asylum seekers.<sup>9</sup> Seeking to suppress passage of the initial screenings flies in the face of applicable law. It risks turning someone away to face near certain death without ever having given them a fair day in court. Suppressing passage of threshold interviews is unprofessional, inappropriate, and unlawful.

We request that you respond to the following questions by October 11, 2019:

1. How many CBP agents have been trained to conduct credible fear interviews as of the date of your response to this letter?
  - a. Will additional CBP agents be trained to conduct credible fear interviews? If so, how many additional CBP agents are expected to be trained? How long do you expect the training of these additional agents to take?
  - b. Have any CBP agents been trained to conduct reasonable fear interviews? If so, how many?
  - c. Will any additional CBP agents be trained to conduct reasonable fear interviews? If so, how many additional CBP agents are expected to be trained? How long do you expect the training of these additional agents to take?
2. The USCIS Asylum Division's training for asylum officers includes an Asylum Officer Basic Training Course. The course includes the topics of international refugee law and the U.S. Asylum Program's role in world-wide refugee protection, U.S. asylum law and its interpretation by the Board of Immigration Appeals and federal appellate courts, interviewing techniques, researching country of origin information, and decision-making/writing. Separate training sessions address interviewing survivors of torture, identifying possible cases of victims of trafficking, handling cases of children, and handling claims that may be specific to women.<sup>10</sup> Unsurprisingly, basic instructional materials governing credible fear determinations span 675 pages.<sup>11</sup>
  - a. Please describe, in detail, the training that USCIS asylum officers conducting credible fear interviews are required to undergo and provide any related materials in your response.

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<sup>9</sup> Julia Ainsley, *et al.*, NBC News, "Trump admin wants to make asylum harder by putting border agents in charge" (Apr. 9, 2019), *available at* <https://www.nbcnews.com/politics/immigration/trump-admin-wants-make-asylum-harder-putting-border-agents-charge-n992436> ["Apr. 9 Report"]; Eileen Sullivan, Michael D. Shear, The New York Times, "Trump Sees an Obstacle to Getting His Way on Immigration: How Own Officials" (Apr. 14, 2019), *available at* <https://www.nytimes.com/2019/04/14/us/politics/trump-immigration-stephen-miller.html>.

<sup>10</sup> U.S. Citizenship and Immigration Services, Asylum Division Training Programs, *available at* <https://www.uscis.gov/humanitarian/refugees-asylum/asylum/asylum-division-training-programs>.

<sup>11</sup> U.S. Citizenship and Immigration Services, Lesson Plan Overview (Feb. 28, 2014), *available at* [https://www.uscis.gov/sites/default/files/files/nativedocuments/Asylum\\_and\\_Female\\_Genital\\_Mutilation.pdf](https://www.uscis.gov/sites/default/files/files/nativedocuments/Asylum_and_Female_Genital_Mutilation.pdf).

- b. Please describe, in detail, the training that USCIS asylum officers conducting reasonable fear interviews are required to undergo and provide any related materials in your response.
  - i. The legal standard for establishing a reasonable fear of persecution is higher than the legal standard for credible fear interviews. What, if any, additional training are USCIS asylum officers required to undergo before conducting reasonable fear interviews?
- c. Are USCIS officers required to conduct affirmative asylum interviews before they are authorized to conduct credible fear or reasonable fear interviews?
- d. How has DHS, CBP, and USCIS determined the training program that Border Patrol agents (and any other CBP agents authorized to conduct interviews) will receive? Please describe the precise training program, including the topics the training program includes, and provide any related written materials with your response.
  - i. Have CBP agents received any training specific to the conduct of reasonable fear interviews? If so, please describe the training they have received.
- e. How many hours of training will CBP agents be required to receive before conducting their first credible fear or reasonable fear interviews?
- f. Will CBP-conducted credible fear or reasonable fear interviews be supervised during the interviews? If so, how long will they be supervised? By whom?
  - i. Are CBP agents serving as supervisory asylum officers to review initial credible fear or reasonable fear determinations?
- g. Have CBP agents conducting credible fear or reasonable fear interviews first been required to conduct affirmative asylum interviews?
- 3. Reportedly, it has been acknowledged that "additional training will be required" before CBP agents conduct any credible fear interviews with family units.<sup>12</sup>
  - a. What was meant by the "additional training" that would be required?
  - b. What "additional training" was administered to the Border Patrol agents (and any other CBP agents) that have been deployed to the Family Residential Center in Dilley, Texas?

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<sup>12</sup> Sept. 19 Report.

4. It has been reported that, as of last month, Border Patrol agents had completed 178 credible-fear screenings with single adults and only 54% of applicants were determined to have met the credible fear standard<sup>13</sup>—which is substantially lower than the USCIS approval rate of 90%.<sup>14</sup> Individuals who are ultimately determined to not have met the threshold credible fear standard are then unable to proceed to full asylum proceedings.
  - a. How many CBP agents are currently conducting credible fear interviews? What percent of total DHS employees conducting credible fear interviews are employed by CBP or one of its sub-agencies? Please include in your response a breakdown by number and percent for each location at which CBP agents are conducting credible fear interviews (either in-person or telephonically), including at the Dilley, Texas Family Residential Center.
    - i. Please provide the same data for reasonable fear interviews.
  - b. As of the date of your response, how many credible fear interviews have been conducted by CBP agents?
    - i. When did a CBP agent first conduct a credible fear interview?
    - ii. How many of the total number of credible fear interviews were with family units?
    - iii. How many of the total number of credible fear interviews were with individuals under the age of 18?
    - iv. How many of the total number of credible fear interviews are conducted telephonically?
  - c. As of the date of your response, how many reasonable fear interviews have been conducted by CBP agents?
    - i. When did a CBP agent first conduct a reasonable fear interview?
    - ii. How many of the total number of reasonable fear interviews were with family units?
    - iii. How many of the total number of reasonable fear interviews were with individuals under the age of 18?
    - iv. How many of the total number of reasonable fear interviews are conducted telephonically?

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<sup>13</sup> Sept. 19 Report.

<sup>14</sup> Julia Ainsley, NBC News, "Stephen Miller wants Border Patrol, not asylum officers, to determine migrant asylum claims" (July 29, 2019), *available at* <https://www.nbcnews.com/politics/immigration/stephen-miller-wants-use-border-agents-screen-migrants-cut-number-n1035831>; Apr. 9 Report.

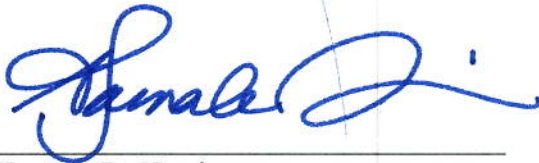
- d. Commencing with the date on which a CBP agent first conducted a credible fear or reasonable fear interview please provide the following data (subdivided into each type of interview):
- i. The total number of interviews conducted.
  - ii. The total number and percent of interviews conducted by CBP agents.
  - iii. The total number (and percent of total interviews) of affirmative determinations made across all interviews.
    1. What number and percent of these determinations were made by CBP agents as opposed to USCIS asylum officers?
  - iv. The total number (and percent of total interviews) of negative determinations made across all interviews.
    1. What number and percent of these determinations were made by CBP agents as opposed to USCIS asylum officers?
    2. What number and percent of negative determinations have been appealed?
    3. What number and percent of negative determinations have been overturned by an Immigration Judge?
      - a. What number and percent of negative determinations that have been overturned were initially made by CBP agents?
5. CBP is, first and foremost, a law enforcement agency. What, if any, analysis was conducted by DHS, CBP, and/or USCIS regarding the potential impact of authorizing CBP agents to conduct credible fear and/or reasonable fear interviews? Please provide any written documentation of such analyses with your response.
6. CBP has stated that the social media conduct reported by ProPublica earlier this summer are under investigation. What, if any, analysis was conducted by DHS, CBP, and/or USCIS in light of the anti-immigrant sentiments expressed on social media? Please provide any written documentation of such analyses with your response.
- a. Is any individual who was a member of the Facebook group reported by ProPublica undergoing training to conduct credible fear interviews or conducting credible fear interviews? If so, how many?
  - b. Is any individual subject to a misconduct investigation relating to conduct on social media undergoing training to conduct credible fear interviews or conducting credible fear interviews? If so, how many?



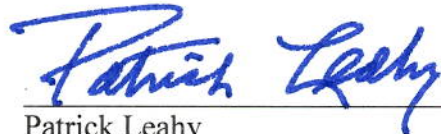
7. Recent reports indicate that at least some subset of Border Patrol agents (or other CBP agents) conducting credible fear interviews have not worn their uniforms during the interviews. Has DHS issued a formal policy prohibiting agents from wearing uniforms or being armed during credible fear or reasonable fear interviews?

Thank you for your attention to this important matter. We look forward to your timely response.

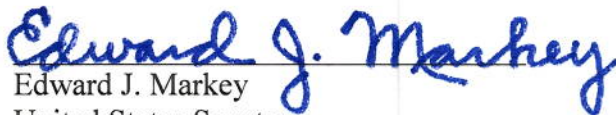
Sincerely,



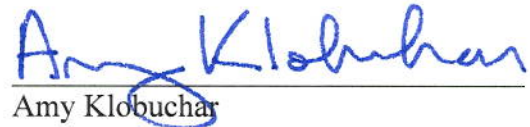
Kamala D. Harris  
United States Senator



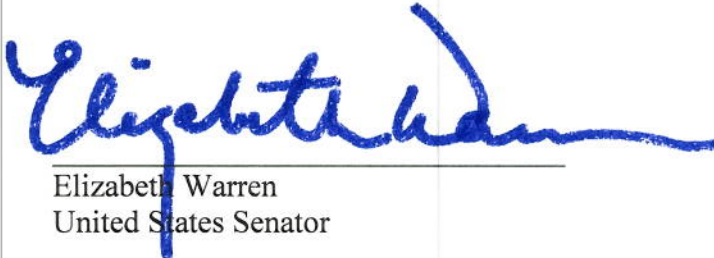
Patrick Leahy  
United States Senator



Edward J. Markey  
United States Senator



Amy Klobuchar  
United States Senator



Elizabeth Warren  
United States Senator



Bernard Sanders  
United States Senator



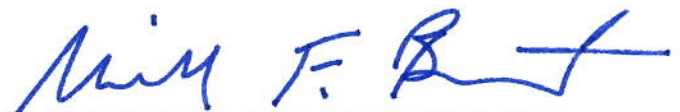
Mazie Hirono  
United States Senator



Kirsten Gillibrand  
United States Senator



Richard Blumenthal  
United States Senator

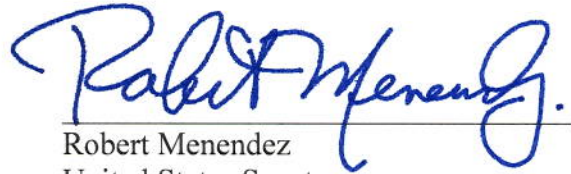


Michael F. Bennet  
United States Senator



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Cory A. Booker  
United States Senator



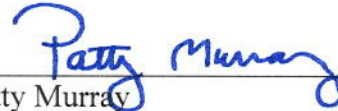
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Robert Menendez  
United States Senator



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Jeffrey A. Merkley  
United States Senator



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Patty Murray  
United States Senator